

EXCEL 2010
Wednesday, July 14
10:30 AM – 12:00 PM

*Complaints, Solutions
and Choices ... Oh My!*

Advancing Federal Workplace ADR Beyond Mediation

Common Workplace Concerns

- *Employment discrimination*
- *Reasonable accommodation*
- *Harassment*
- *Retaliation*
- *Personnel actions*
- *Performance evaluations*
- *Terms and conditions of employment*
- *Working environment*

What is MD-110?

- *Management Directive 110 – guidance issued by the EEOC*
- *Describes procedures for processing complaints from federal employees and applicants alleging employment discrimination*
- *New version effective November 9, 1999 (old version effective November 10, 1992)*

MD-110 and Workplace Disputes

Between 1992 and 1999:

- *Administrative Dispute Resolution Act (1996)*
- *EEOC's ADR Policy Statement (1996)*
- *Executive Order 12988 on Civil Justice Reforms (1996)*
- *Presidential Memorandum on ADR (1998)*

ADR under MD-110

Considerations in program design:

- *Flexibility*
- *Fairness*
 - *Voluntariness*
 - *Neutrality*
 - *Confidentiality*
 - *Enforceability*
- *Training and evaluation*

Exceptions to ADR

- *Need to establish policies or precedents*
- *Resolution has significant effect on non-parties*
- *Full public record is important*
- *Agency must maintain continuing jurisdiction over a matter*
- *Where otherwise inappropriate*

Inappropriate for ADR

- *Investigations by IG, OPM, OSC, police*
- *Lack of jurisdiction (workers' comp, disability retirement, suitability determinations, TSP)*
- *Egregious misconduct (violence or threats)*
- *Class complaints*

Commonly Used ADR Processes

- *Mediation*
- *Informal conciliation*
- *Facilitation*
- *Arbitration*

Other ADR Processes

- *Fact finding*
- *Early neutral evaluation (ENE)*
- *Settlement conferences*
- *Mini-trial*
- *Peer review or dispute panel*
- *Alternative discipline*

More Recent ADR Approaches

- *Internal ombudsperson*
- *Conflict coaching*
- *Appreciative inquiry*
- *Community of practice*
- *Conflict resolution skills training*

Settlement Authority

- *No admission of wrongdoing is necessary*
- *No finding of discrimination is required*
- *Provides significant flexibility*
- *Creativity is encouraged*
- *Agreement is enforceable*
- *Can settle existing and potential claims (as long as the factual predicate has occurred)*

Limitations on Settlement Authority

- *MD-110 applies only to EEO disputes*
- *Remedy can be different from, but no greater than, what the court could provide*
- *Agreement must be in writing*
- *Settlement may not involve waiver of remedies for future violations*

Types of Settlement

- Cash settlements
 - Back pay
 - Attorney fees (not under ADEA or EPA)
 - Compensatory damages (up to \$300,000)
- Personnel actions
 - If retroactive, include retirement contributions
- Any combination of the above
- Protect privacy on SF-50

Resources

- EEOC:
<http://www.eeoc.gov/federal/directives/md110.cfm>
- Federal Interagency ADR Working Group:
<http://www.adr.gov/workplace.htm>

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